Supreme Court, U.S.
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No

IN THE

Supreme Court of the United States

WILLIAM LUTHER STEWART,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari from the United States Court of Appeals for the Fourth Circuit

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Pro se Petitioner

December 11, 2006

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The Fifth Amendment to the United States Constitution: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time or War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

JURISDICTIONAL STATEMENT

The district court entered judgment in this case on April 29, 2005, The Fourth Circuit denied Petitioner's appeal on June 16, 2006, and Petitioner's Motion for Rehearing was denied on July 11, 2006. The Court has jurisdiction to entertain this appeal pursuant to Article III, Section 2 of the U.S. Constitution and 28 U.S.C. Section 1254.

CONCISE STATEMENT OF THE CASE

Petitioner is an individual with a high school education and training obtained through the U.S. Navy, who invented a technology to enable the transmission of broadband signals, such as telephone, television, and internet, over electric power lines ("BPL"). Blair is a successful experienced businessman. Tr. 486-488. In the late 1990's, Petitioner and Blair formed a company named Media Fusion Corp. to patent and develop Petitioner's technology. Petitioner was the Chairman of the Board and Chief Scientist, and Blair was President and CEO and handled the business side. It has been widely reported that BPL is a promising technology which is currently being rolled out by numerous utilities and other companies.

This case involves allegations that Petitioner and Blair committed wire fraud and money laundering in securing a loan from Scana Corporation for $1 million to develop and deploy BPL technology. Petitioner and Blair were jointly indicted on numerous counts of money laundering and wire fraud, but the money laundering counts were all dismissed before trial. They were then tried together on six identical counts of wire fraud, the only differences in the counts being that each count was based on a separate wire transmission. (Appendix p. 35) Blair was acquitted on all counts, and

Petitioner was acquitted on five counts but was convicted on a single count, alleging transmission of a fax containing monthly milestones and budget for Media Fusion on or about March 5, 1999. (Appendix p. 33) Thus, not only were all the allegations of money laundering dismissed, but the jury acquitted the two Defendants on a total of eleven of the twelve overlapping counts of wire fraud which remained, leaving a single count for this appeal.

Petitioner appealed his conviction on the one count based on several grounds including sufficiency of evidence. (Appendix p. 37) In its June 16, 2006 decision, the Fourth Circuit affirmed the conviction, stating that, "Even though the fax was sent by Blair, the jury could reasonably have believed that Stewart directed Blair to send the fax or that he assisted Blair in doing so. Stewart and Blair were the two principals of Media Fusion and were constant companions in obtaining the loan from Scana." (Appendix p. 63) Therefore, even though it is uncontested that Blair sent the subject fax and was acquitted on all charges, Petitioner was convicted on the basis of the same fax.

Petitioner acknowledges that he and Blair were principals in Media Fusion. However, contrary to the Fourth Circuit's determination, the record does not establish beyond a reasonable doubt that Petitioner and Blair "were constant companions in obtaining the loan from Scana." Therefore, one of the two factual predicates for the inference drawn by the Fourth Circuit in support of Petitioner's conviction is wrong.

Bob Long ("Long") was the General Manager of Corporate Planning for Scana, was generally in charge of evaluating business opportunities for Scana, and testified at trial as a Government witness. Tr. 365, 413-414. Long testified that he was the "lead facilitator person" for Scana's dealings with Media Fusion and was the "point man" for Scana from the business side. Tr. 488-489 and 522. Long

also testified that he didn't talk to Mr. Stewart a lot and may have done so as few as three times. Tr. 503. In contrast, Long testified that he separately communicated with Blair many times regarding the transaction. Tr. 380-2, 396, 406-407, 427-428, 436, 488-489, 494, and 522. Long's separate communications with Blair addressed such things as costs, budget, and profitability, which were the subject of the March 5 fax. Tr. 372, 427- 428. No evidence was adduced at trial that Stewart participated in these additional communications focusing on the business aspects of the transaction.

Further, the evidence at trial was that the March 5, 1999 fax was from Blair to Long. Tr. 370-1, 414-5. Long testified specifically:

Q: All right. And you requested Government's 6 as a result of that?
A: I, in conversation with Ed Blair, I had asked do you have a business plan, how the money will be spent, and how the commercialization of the product will take place.

Q: And that's when you got Government's 6?

A: That's correct.

Tr. 371-2. Thus, Long testified that he directly asked Blair to provide him with the budget and milestones, and Blair did so. Therefore, Long's testimony is squarely inconsistent with the notion that Petitioner "directed Blair to send the fax or that he assisted Blair in doing so." There is no indication in the record that Petitioner even knew of Long's request for this data, or that he had any reason to anticipate that Blair would be furnishing this data to Scana at all or specifically by wire. Instead, Long's testimony that he dealt with Blair, not Petitioner, regarding the business side of the transaction confirms that Blair sent the fax on his own[1].

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[1] The Government presented evidence and testimony from Petitioner and Blair at trial through an FBI investigator with whom they both voluntarily

It is not reasonable to draw the evidentiary inference beyond a reasonable doubt that Petitioner directed or assisted in the fax based merely on the fact that he and Blair were principals in Media Fusion in light of Long's unimpeached testimony that Long specifically asked Blair for a business plan and that Blair sent it to him.[2]

It necessarily follows that it is mere conjecture and speculation that Petitioner directed Blair to send the fax or assisted him in doing it. Consequently, the Fourth Circuit's decision affirming Stewart's conviction is contrary to decisions by the Third, Fifth, and Seventh Circuits that an inference can be relied upon "when no direct evidence is available so long as there exists a logical and convincing connection between the facts established and the conclusion inferred." *U. S. v. McNeill,* 887 F.2d 448 (3rd Cir. 1989); *Fenner v. General Motors Corp.*, 567 F.2d 647 (5th Cir. 1981) ("An inference may be unreasonable if it is 'at war with uncontradicted or unimpeached facts'"); *NLRB v. Kaye*, 272 F.2d 112 (7th Cir. 1959) ("It has been held, and we think properly, that inferences contrary to direct testimony are not ordinarily sufficient to support a finding"); see also *Hammerly Oaks v. Edwards*, 958 S.W.2d 387 (Tex. 1997). It is even more egregious here than in some of the civil cases cited above, because in a criminal proceeding, the

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consented to be interviewed, and by reading portions of lengthy depositions that Scana had taken of them in civil proceedings. Further, three additional officials of Media Fusion who were involved in raising money for the company, including one of whom directly met with Scana, testified as Government witnesses at trial—Admiral James Carey, Jesse Hanger, and Kate Scoggins Travis. Therefore, although the Government had access to the relevant facts, it failed to present any testimony that Stewart participated in sending the March 5 fax to Long or anticipated that it would be transmitted by wire, or even regarding Media Fusion's normal business practices concerning the use of facsimiles, giving rise to a negative inference regarding Petitioner's involvement with the fax.

[2] Here, Blair was acquitted on the same count of wire fraud, even though it is uncontested that he sent out the fax at issue.

government must prove its allegations beyond a reasonable doubt instead of merely by a preponderance of the evidence.

The inference must be reasonably drawn from, and supported by, the facts on which it purports to rest. The reasonableness of an inference is largely determined by the nature of the underlying facts upon which the inference is premised. A reasonable inference is a rational and logical conclusion drawn from established facts when those facts are viewed in the light of common knowledge or experience. An inference must be made in accordance with correct and common modes of reasoning, and, according to some decisions must be strong and almost inevitable, although it is not required that an inference be justified beyond all doubt. 32A Corpus Juris Secundum, Section 1341 at 764, citing *U.S. v. Carroll*, 212 F. Supp. 422 (D.C. Ark.)

The Supreme Court should grant cert in order to resolve this important matter on which the Federal Circuit Courts of Appeal are divided. *Rules of the Supreme Court of the United States, Rule 10.*

Further, Petitioner respectfully submits that the Court should grant cert, because Petitioner has been sentenced to jail based on a finding made by the district court instead of by the jury, which the district court has acknowledged is inconsistent with the verdict, because this result is contrary to this Court's decision in *Cunningham v. California,* 549 U.S. __ (2007) and *U.S. v. Booker*, 543 U.S. 220 (2005). Petitioner is not an attorney and very recently became aware of this precedent as the result of press reports regarding *Cunningham,* which was decided on January 22, 2007, and he is promptly presenting this case to the Court.

Injury or loss is not an element of criminal mail fraud. Petitioner was convicted on Count one but was acquitted on the remainder of the counts, including specifically Counts five and six. [See Jury Verdict in the Appendix, page 35.] The Government did not allege any loss as part of Count

one, but it did allege $1 million dollars of injury or loss in Counts five and six. [See Jury Verdict in the Appendix, page 35 and the superceding indictment in the Appendix pages 24-32, 33 and 34.] Thus, the jury verdict convicting Petitioner on Count one did not include any finding that Petitioner's conduct resulted in any injury or loss, and to the contrary, the jury determined that Petitioner did not cause any loss by acquitting him on Counts five and six. [See Superceding Indictment in Appendix, pages 24 through 32 and 33 and 34.]

A critical issue at Petitioner's sentencing hearing was whether Scana was a "victim" of the mail fraud and whether it suffered any loss, because this would result in an "eleven point enhancement" under the Federal Sentencing Guidelines. Both the district court and the Government openly acknowledged during the sentencing hearing that it was "troubling" for the district court to make the finding of a million dollar loss, justifying the eleven point enhancement, because this had been rejected by the jury:

THE COURT: Mr. Eichelberger, I think that this issue in objection eight about the 11 point enhancement for the million dollars is troubling because of the jury verdict in count five.

MR. EICHELBERGER: It is.

THE COURT: And, you know, we have been through all of this Booker and Fanfair issue. This was presented to the jury.

MR. EICHELBERGER: It was.

THE COURT: And they rejected it, in a sense. In count five at least.... Tr. 1273-1274.

Even though the district court recognized that the jury had rejected the allegation that Petitioner's actions resulted in a loss, the district court ultimately went on to find that Scana was a victim and its loss was $1 million based on the district court's assessment of the evidence:

THE COURT: All right. Well, it's a hard issue. I think that I have to go with my assessment of the evidence was, and my assessment of the evidence was that SCANA would not have loaned the $1 million had these false representations not been made or had they known the falsity of those false representations. Therefore, I find that SCANA is a victim under paragraph 20, and I also find that the amount of loss was $1 million. Tr. 1278-1279.

The district court then sentenced Petitioner to thirty months imprisonment based on the eleven point enhancement, acknowledging that whether the enhancement properly applied was a critical issue which needed to be decided on appeal before Petitioner was required to serve any time:

THE COURT: ... Then the Court adopts the factual statements contained in the presentence report as revised on the record. We have a total offense level of 19, a criminal history category of one, a guideline range of 30 to 37 months imprisonment, a supervised release range of two to three years, a special assessment of $100.

Mr. Griffin, it would be my proposal that I would give the minimum sentence. I would also in this case be willing to stay execution of the sentence pending appeal because of these difficult issues.

MR. GRIFFIN: Thank you, your honor.

THE COURT: Because if I had ruled otherwise on that 11 point enhancement it could have made the difference between incarceration or not. And I don't think you can get an appellate decision in time to prevent him from serving time if he is not due to serve the time, if I am wrong on that enhancement. Tr. 1286-1287 (emphasis added.)

Thus, the district court openly acknowledged that Petitioner would not have been sentenced to prison if the eleven point enhancement did not properly apply, and it was concerned enough about this "troubling" issue to stay execution of Petitioner's sentence pending appeal.

On appeal, the Fourth Circuit specifically and significantly stated that it was permissible for the district court to determine whether Petitioner's conduct caused a loss based on a preponderance of the evidence and then considered whether there was sufficient evidence to support the finding of a million dollar loss, but it did not address whether a jury finding justified the sentence imposed, nor did it address the acknowledged inconsistency between the verdict on Count 5 and the district court's finding on the eleven point enhancement. These are fatal flaws.

Petitioner's sentence needs to be reversed in accordance with *Cunningham and Booker*:

> The facts so found are neither inherent in the jury's verdict nor embraced by the defendant's plea, and they need only be established by a preponderance of the evidence, not beyond a reasonable doubt. The question presented is whether the DSL, by placing sentence-elevating fact finding within the judge's province, violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments. We hold that it does.

> For reasons explained in *Jones, Apprendi,* and *Ring*, the requirements of the Sixth Amendment were clear. The application of Washington's sentencing scheme violated the defendant's right to have the jury find the existence of 'any particular fact'" that the law makes essential to his punishment. 542 U.S. at 301. That right is implicated whenever a judge seeks to impose a sentence that is not solely based on "facts reflected in the jury verdict or admitted by the defendant."

549 U.S. __ (2007); 543 U.S. at 232 (emphasis added.) In this case Petitioner was sentenced to prison based on the district court's determination of a million dollar loss, which was not only not found by the jury or admitted by the defendant, but which the district court openly acknowledged was inconsistent with the verdict on Count 5. The district court made this finding based on the preponderance of the evidence rather than proof beyond a reasonable doubt, and the Fourth Circuit expressly affirmed it on that basis. Even though the Federal Sentencing Guidelines are no longer mandatory as the result of *Booker*, in this case the district court clearly indicated that Petitioner would not have been sentenced to incarceration unless it properly determined that the eleven point enhancement applied ("And I don't think you can get an appellate decision in time to prevent him from serving the time if he is not due to serve the time, if I'm wrong on that enhancement.") Tr. 1287.

Consequently, because the jury did not find the facts justifying the enhancement supporting Petitioner's incarceration and those facts were not admitted by defendant's plea, the district court's sentencing decision based on its finding of a million dollar loss by the preponderance of the evidence was erroneous. Accordingly, unless appeals of federal sentences can now only occur in "Wonderland," as Justice Scalia asserted in his dissent in

Booker, Petitioner's sentence should be reversed under the reasonableness standard articulated by the majority opinion in that case. 543 U.S. 261-263. If the basis that the district court expressly articulated for its sentence is erroneous, the sentence is necessarily unreasonable and should be reversed.

SUMMARY OF ARGUMENT

Petitioner was found guilty of criminal conduct that the evidence at issue in this appeal, the appellate court, and the transcript unequivocally and uncontrovertibly prove beyond any doubt that Petitioner did not engage in the criminal conduct Petitioner was accused of.

To be specific, the Petitioner was acquitted, by the trial jury, of the very same conduct that is the subject of this appeal. The Defendant in District Court, through his Attorney, testified that Petitioner did not commit the crime herein on appeal. No evidence exits to support the verdict and no jury instructions by the District Court clearly identified this discrepancy. Therefore, the jury did not have proper instruction; which Petitioner's Counsel did not recognize until the conflicting verdict was read.

Petitioner's Counsel raised the inconsistency of the verdict and, the issue of the true and correct facts that were before the jury as grounds for dismissal and the District Court, upon the objections of the U.S. Government, sustained the verdict and admitted that by doing so error may have been committed. Subsequently, the Petitioner was released, on his on recognizance, to pursue his appellate rights.

The District Court offered no other remedy to this decision and, further, opted to validate a jury verdict without evidence. In addition, on appeal the Circuit court relaxed the standard of the criminal burden of proof with a lesser standard of civil burden of proof.

Petitioner was found guilty[3] on the very facts upon which both he and an alleged co-conspirator and co-defendant were both found not guilty on the same charge by the same jury.

This verdict is wrongfully based. The Petitioner was found guilty of one count of wire fraud general that incorporated by reference counts for which petitioner was acquitted, plus one count that on which there was direct uncontroversial evidence at trial that the petitioner did not commit the criminal conduct and as Vice President had no authority to direct codefendant to commit such conduct and the jury acquitted both defendants of committing such criminal conduct.

Specifically, Petitioner was found guilty of wire fraud because another person sent a fax that was requested and was then alleged by the U.S. Government to mislead the recipient on the timing and state of the development of this advanced technology. However, examination of the "material facts" set out in the controversial fax from "Media Fusion" stated the technical success and deployment was all premised on adequate funding. This fact is extremely important because the recipient tried to prevent this technical effort from occurring and may have tried to secure the technology via unfair business practice.

Coincidentally, this same claimant is now seeking ownership of the technology, which it slandered continually and aided the U.S. Government's prosecution in the trial where the U.S. Government accused the Petitioner of criminal statutes. This raises the question of whether or not the U.S. Government is complicit in this trial. Or more specifically, did the U.S. Government, or its agents, gain in taking an action to curtail or terminate any communications technology that is challenging to the current U.S. electrical and communications infrastructure?

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[3] Petitioner found guilty of wire fraud in violation of 18 U.S.C. § 1343 and 2.

ARGUMENT

I. THERE IS A COMPELLING NEED TO REVERSE THE FOURTH CIRCUIT DECISION IGNORING THE NATURE AND SUFFICENCY OF EVIDENCE IN TRIAL TC SUSTAIN DISTRICT COURT DECISION WHERE THE ACTION IS INCONSISTENT WITH DUE PROCESS RIGHTS AND CONSTITUTIONAL LAW

At this critical time in our history where many citizens question whether or not our civil rights are being compromised we cannot afford to allow our Federal Courts and Circuits to disregard Due Process Rights and Constitutional Law.

In re Winship, 397 U.S. 358, 364 (1970), the Supreme Court explicitly held that the Due Process Clause requires the government to prove every element of a charged offense beyond a reasonable doubt. "[S]o long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof." Victor, 511 U.S. at 5.

"When any trial court is allowed to ignore the nature of evidence or any appellate court is allowed to ignore the nature of any evidence or criminal procedure that is not permitted by the "Good Law of the Land". They have acted grossly negligent and committed errors that must be reversed. If not reversed there is inconsistency between the application of the "rule of law" as promulgated by the U.S. Constitution, the U.S. Congress, The U.S. Supreme Court

and the entire judicial system of the United States of America and the rights provided to citizens under the U.S. Constitution and its Amendments.

There is no sufficient remedy to this occurrence other than a reversal of opinion. The Fourth Circuit committed a reversible error in applying a civil burden of proof standard of "substantial evidence" in a criminal trial." *In re* Winship, 397 U.S. 358, 364 (1970)"

After *Winship* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Woodby* v. *INS*, 385 U.S., at 282 (emphasis added). Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *Johnson* v. *Louisiana*, 406 U.S., at 362. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the fact finder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon "jury" discretion only to the extent necessary to guarantee the fundamental protection of due process of law.

It is clear that there was no evidence in the trial record that provided for the Petitioner's guilt. In addition the Fourth Circuit admitted that Defendant Blair "sent the fax that is in question". Further, Defendant Blair was acquitted

of this charge showing there was no criminal act. It is difficult for the Petitioner to comprehend how a guilty verdict can be sustained in this manner when the evidence does not support Petitioner committing this act. The evidence is to the contrary. Certainly the Fourth Circuit erred in their review in relaxing the standard of proof.

There is no legal precedent that provides for such a change of standard of proof in the U.S. Criminal Code of Justice or in the Appellate process of the U.S. Criminal Code of Justice. The Circuit Courts should not be inconsistent. Inconsistency leads to "unbridled inferences" to the meaning of the law and rejects "stare decisis".

While there may be an occurrence that may require a decision "ratio decidendi" because the cases of precedent seem to be obscure, or out of accord with authority or established principle; it is irrational to assume that the body of law, including criminal law, is not established principle under the U.S. Constitution and the law of the land. Mr. Justice BRENNAN continued in the *Winship* opinion…that '(g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.' *Davis v. United States*, supra, 160 U.S., at 488 stated that the requirement is implicit in 'constitutions ... (which) recognize the fundamental principles that are deemed essential for the protection of life and liberty.' *In re* Winship, 397 U.S. 358, 364 (1970)

In Davis a murder conviction was [397 U.S. 358, 363] reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally

balanced regarding the sanity of the accused. This Court said: 'On the contrary, he is entitled to an acquittal of the specific crime charged, if upon all the evidence, there is reasonable doubt whether he was capable in law of committing crime. ... No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them ... is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.' Id., at 484, 493, 360.

II CERTIORARI IS WARRANTED TO REEXAMINE THE FOURTH CIRCUIT'S UNPRECEDENTED ADAPTATION OF THE CRIMINAL CODE AND IT'S INTREPRETATION

A. The Decision Below Violates Both the Origin and Purpose of the Due Process Rights as Set Forth and Guaranteed in the U.S. Constitution.

In *Thomson v The City of Lewisville et al,* the U.S. Supreme Court held that an examination of the record presented in the petition for certiorari showed that although the fines imposed were small, the due process questions presented were substantial. The court held that under the words of the ordinance, if the evidence failed to prove all three elements of the loitering charge, the conviction was not supported by evidence, in which event it did not comport with due process of law. The court held that there was no evidence at all in the record to support the convictions. Further, the court held that just as conviction upon a charge not made would have been sheer denial of due process, so to it was a violation of due process to convict and punish petitioner without evidence of his guilt.

"Accordingly, a society [397 U.S. 358, 364] that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of ... convincing the fact finder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967)."

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper fact finder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." [397 U.S. 358, 365]

II

Finally, we reject the Court of Appeals' suggestion that there is, in any event, only a 'tenuous difference'

between the reasonable-doubt and preponderance standards. The suggestion is singularly unpersuasive. In this very case, the trial judge's ability to distinguish between the two standards enabled her to make a finding of guilt that she conceded she might not have made under the standard of proof beyond a reasonable doubt. Indeed, the trial judge's action evidences the accuracy of the observation of commentators that 'the preponderance test is susceptible to the misinter- [397 U.S. 358, 368] pretation that it calls on the trier of fact merely to perform an abstract weighing of the evidence in order to determine which side has produced the greater quantum, without regard to its effect in convincing his mind of the truth of the proposition asserted.' Dorsen & Rezneck, supra, at 26-27.6.

B. The Fourth Circuit's Decision is at Odds With the Court's Functional Approach to the Procedures of Criminal Law.

Further stated in the *Winship Doctrine* are the expressions in many opinions of the U.S. Supreme Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312 (1881); *Davis v. United States*, 160 U.S. 469, 488, 358 (1895); *Holt v. United States*, 218 U.S. 245, 253 , 6 (1910); *Wilson v. United States*, 232 U.S. 563, 569 -570, 349, 350 (1914); *Brinegar v. United States*, 338 U.S. 160, 174 , 1310 (1949); *Leland v. Oregon*, 343 U.S. 790, 795 , 1005, 1006 (1952); *Holland v. United States*, 348 U.S. 121, 138 , 136, 137 (1954); *Speiser v. Randall*, 357 U.S. 513 , 525-526, 1342 (1958). *Cf. Coffin v. United States*, 156 U.S. 432 (1895).

The confidence in our nations law and legal procedures regarding Due Process and Constitutional Rights

are the basis for our belief that all in our nation is afforded equal justice under the law. Therefore, any action taken by the American judicial system should exhaust every effort to protect citizen's rights and there by protect our nation.

Prosecutors, whether they are U.S. Attorneys or otherwise should uphold these standards or the legal system itself with fail the people. Judges must use their power to preserve the rights and procedures at trials. In the case where life, liberty, fortune and citizenship are at risk, the necessity of Prosecutors, Defenders and Judges that participate in this process must first, and most importantly, maintain a defendant's rights to a fair trial. A fair trial is the constitutional right of every American citizen.

The Fourth Circuit[4] failed the people of the United States and the Petitioner by drawing a conclusion to an allegation as fact by "belief and inference". In so doing they violated the 5th and 14th Amendments of our U.S. Constitution and failed to apply proper legal standards of review. Further, in spite of clear evidence in the trial transcript contrary to their decision[4] they chose to admit the lack of evidence against Petitioner and proceed with inferring that "the jury could reasonably have believed" that "Petitioner directed defendant Blair to commit a crime[5]" or in the alternative; that Petitioner "assisted defendant Blair in committing a crime". There is no evidence in the trial transcript or otherwise to assume or believe that Petitioner had the power, right, or other control over defendant Blair to direct his actions.

In fact, the trial evidence indicated that defendant Blair was the President of the company and therefore responsible and controlled all actions of the company to which it may have been bound and he himself was acquitted of this specific fact of the specific count. Still further, the

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[4] Fourth Circuit Opinion, June 16th, 2006, § I

[5] An action that Defendant Blair was acquitted of at trial.

Fourth Circuit admitted: "Even though the fax was sent by Blair…" an admission that further corroborates Petitioner's innocence; the Fourth Circuit seems to ignore the necessity of the rule of sufficiency of evidence in a criminal trial or appeal in their appellate review and subsequent decision.

The Fourth Circuit, in making their decision, failed to use the standards as set by Criminal Procedure and Constitutional Law that requires proof beyond a reasonable doubt to sustain a criminal conviction. An inference of guilt is not proof of guilt. Therefore, the Fourth Circuit erred in its decision and this error should be reversed for the Petitioner.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that the Supreme Court should grant his Petition for Writ of Certiorari, because compelling reasons to do so exist, including that the Petition raises important matters on which the United States courts of appeals, specifically the Third, Fourth, Fifth, and Seventh Circuits have entered decision in conflict, and that the Fourth Circuit has departed so far from the accepted and usual course of proceedings and has sanctioned such a departure by the district court, to warrant an exercise of this Court's supervisory power. *Rule 10.*

CONCLUSION

For the foregoing reasons, Petitioner requests the Supreme Court to accept review of this case and grant this Writ of Certiorari. This case warrants Supreme Court Review as the circuit court below erred in its decision to uphold a criminal conviction of wire fraud based on direct evidence to the contrary and facts upon which petitioner and alleged co- "Scheme to Defraud" were both acquitted.

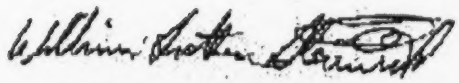
Not only did the circuit court admit in its holding that

petition did not in fact commit the act upon which the alleged wire fraud was based but erroneously used a "substantial evidence" test to infer that the jury could have reasonably believed petitioner directed another that admitted sending the fax and was acquitted of wire fraud for do so. The petitioner was acquitted of the very same wire fraud that is the subject of this petition.

The Fourth Circuit's-error in the application of a lesser standard of proof regarding the weight of evidence in trial to sustain District Court Decision where the application of a "civil standard" was used in a "criminal appeal" to sustain a conviction that fails the sufficiency-of-evidence-test, and is inconsistent with Due Process Rights and Constitutional and established Law.

The Court should also set aside Petitioner's sentence as unreasonable and unconstitutional, because it was expressly based on findings by the District Court under a preponderance of evidence standard, which is inconsistent with the Jury Verdict.

Respectfully submitted:



William Luther Stewart
pro se

December 7th, 2007